A. I did not.

Q. Did not?

Did you recommend to TCI that they fund the DIP that's been talked about this morning?

A. I did not.

MR. LENINGER: No further questions.

THE COURT: Anyone else?

All right. Mr. Buncher -- I'm sorry, Mr. Olson.

MR. OLSON: I'm sorry.

THE COURT: No problem.

CROSS-EXAMINATION

BY MR. OLSON:

Q. Mr. Crown, I'm Dennis Olson. I met you at the Meeting of Creditors, right?

A. Yes, I remember.

Q. And I asked you some questions about your footnote 4 in the schedules. And I believe your explanation was, the intent was when a single property was sold, the cost of sale and the lienholder and the taxes would be paid. And then the vendors for that property would be paid. And then the rest of the money, if there was money left over, would go to the seller note holder.

Do you remember that line of questions?

A. Yes. I believe that's the way that note reads, yes.

Q. And do you recall my saying that I thought that was indicative of bad faith?

A. I remember that, yes.

Q. Do you remember my saying that I would ask you again today if your answer today would be any different?

A. My answer --

Q. Is your explanation as to what would happen to the proceeds of the property any different than what you gave at the meeting?

A. No. I know that has been discussed. But I don't think a decision has been made as to whether to broaden that -- change that commitment in any way.

Q. All right. So it's still property-by-property basis?

A. As we sit here today, as far as I know.

Q. All right. Let me shift gears with you. Earlier this morning, I think you were present when I believe it was Exhibit S was introduced, the properties around Mercer Crossing.

A. The map area?

Q. Yes.

A. Yes.

Q. You're familiar with my client's property, the land on the Iori Centura property?

A. Yes.

Q. It's not on that map, is it?

A. No, it is.

MR. OLSON: No further questions.

THE COURT: All right. Mr. Buncher.

MR. BUNCHER: I don't think I have a whole lot here, Judge.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. BUNCHER:

Q. Mr. Crown, you were here and testified in front of the Court in the first cash collateral hearing; is that true?

A. I did.

Q. And I believe --

MR. BUNCHER: Well, I'd just ask the Court to take notice of his prior testimony as far as his background and so forth.

THE COURT: Very well.

Q. Just briefly, so as not to repeat all of that, briefly describe your education and work background, Mr. Crown.

A. Bachelor of Science degree from Cornell University. And MBA from Michigan State University. I spent about 38 years in the real estate business and development. Probably developed a billion dollars worth of primarily hotel assets. I've spent six years in public accounting, the management

services side of that practice. And I've operated hotels, developed hotels, and developed other forms of real estate enterprises.

Q. One of the things I was going to ask you about was your effort in preparing the schedules and statements of financial affairs. Some of that has already been gone over. But do you believe -- well, just generally describe the process and diligence you went through to try to ensure that the schedules and the statements of financial affairs fairly and accurately represented the financial condition of this debtor.

A. Well, I was -- the schedules are pretty specific in terms of what they're asking for. So as I requested that information from the accounting and operation staff at Regis and Prime. Prime related to the land. Regis related to the operating properties. I received that information. Had quite a few discussions with accounting and operations personnel to verify that it was reasonable and accurate. I had a prior year and prior recent financial performance on the operating property. So I knew exactly how they performed in the past so I could stack that up against some of the materials that I was receiving. So I reviewed them on several occasions with several different personnel before they went into final form.

Q. Do you believe the schedules and statements are

true and accurate?

A. I do.

Q. With regard to the values you placed on the real property, you said you just used the values that were in the transaction documents; is that correct?

A. I did.

Q. Since that point in time, lenders have produced appraisals from their files. We've asked for them to do that. You understand that?

A. I do.

Q. All right. With regard to the questioning about the cold weather, or not, the original transferor should be listed as a co-debtor. Is that something you considered at the time you prepared these schedules or not?

A. As concerns the trade payables we were talking about?

Q. Yes, sir.

A. I did not consider it.

Q. Why not?

A. For two reasons. Well, one primary reason and that was I knew that those -- those transferor entities in many cases had no assets after the transfer. The asset that they transferred to FRE was the lone asset that they held, in many cases. And, therefore, any -- any debt related to that asset, it was the intent of the parties I knew when they

transferred the assets that they would go with them. The even mentioned that as part of the transfer documents to adjust the notes, the seller notes using the trade payables. So I knew that that was the intent of the parties was that they would go with the properties.

Q. If you could, there's a book here, which is Debtor's Exhibits A through O. And if you could turn to Tab F, which is the schedules.

A. All right.

Q. This has been admitted under Armed Forces Exhibit 4.

THE COURT: All right.

Q. For ease of reference here.

THE COURT: Thank you.

Q. Let's look at Schedule D. And Schedule D, of course, is creditors holding secured claims. And then there's an exhibit following that that lists the various creditors and the properties that serve as collateral. It's after the end of Schedule D.

A. I've got both of those.

Q. There you go.

It looks like this. Are you there?

A. I got it.

Q. All right. If you look at the -- did you prepare this?

A. Yes. I prepared this based upon materials given me by accounting personnel and Regis and Prime.

Q. And turn to the last page of that exhibit, if you would.

There's a footnote 6 on there that says, Groups of properties that are cross-collateralized and cross-defaulted and then there's the numbers for the properties listed above are shown in parenthesis; do you see that?

A. I do.

Q. And in each instance where there's numbers in a set of parentheses, does that mean those debts are cross-collateralized, or the properties are cross-collateralized?

A. Yes. That's correct.

Q. And the numbers actually refer to the properties, right?

A. Property numbers on that exhibit, yes.

Q. All right. So if the Court wants to find out which properties are cross-collateralized with one another, this would show that; is that correct?

A. Yes, it would.

Q. There's been a lot of discussion about footnote 4 on Schedule F with regard to the treatment of these -- with regard to the treatment of the seller notes.

A. Uh-huh.

Q. Do you recall the questions about that?
A. I do.
Q. Has there been ongoing discussion with regard to the treatment of those notes?
A. Yes. I know there has, yes.
Q. All right. Regardless of what TCI or the holder of those notes will agree to -- well, strike that.
Do you know whether or not it's the debtor's intention to file a plan that subordinates those notes to every other claim in this bankruptcy case?
A. I know such a stance has been discussed. I don't know whether it's finally been agreed to. But I know Mr. Morgan and others have discussed it.
Q. But regardless of whether TCI agrees to it or not, this debtor can file a plan that completely subordinates those claims; isn't that correct?
A. Yes. Because they're the claims of the debtor.
Q. Right. Do you know whether TCI would object to such treatment or not?
A. I really don't know.
Q. If you could back up to Schedule A. And there's an exhibit to Schedule A, as well.
A. Yes, I've got it.
Q. And that one is organized by property, correct?
A. It is.

Q. And that exhibit on footnote 2, does it also show which properties are cross-collateralized and cross-defaulted?

A. It does.

Q. Did you prepare that?

A. I did.

Q. And to the best of your knowledge, is it true and accurate?

A. Yes. These -- it is true and accurate as of the petition date.

Q. Go to Schedule B, please.

A. All right.

Q. Specifically item 2 which lists all of the different accounts. And it continues over on the second page of Schedule B.

Do you see there are certain tax escrow accounts held by lenders listed there?

A. Yes. I believe there's four of them.

Q. And what properties are those?

A. Anoco Parkway North, Fenton Center, and Arkon.

Q. Is it your understanding that the lender on Fenton Center actually went ahead and paid the 2010 property taxes prior to the filing of this bankruptcy case?

A. I don't know the exact date. But I've been told and I've been shown that they have to pay it, yes.

Q. So the -- is it your understanding on the Fenton Center building that the 2010 taxes were paid?

A. Yes.

Q. Do you know if those funds that are shown on Schedule B still remain in escrow, or are those the funds that you've now learned they used to pay the taxes?

A. Well, they pay taxes in the amount of 1,458,000 and change. I don't know what funds they used to pay those taxes. So I don't know.

Q. But as to Amoco, Parkway North, and Arcon, it's your understanding that money is still sitting in escrow accounts for the purpose of payment of property taxes?

A. Well, it's my understanding as of the date of the filing of the schedules that that's where it sat. Whether it still sits there or not, I can't comment.

Q. And are those escrow accounts accounts in the debtor's name, or are they accounts in -- are these funds held by the banks?

A. Yes. There are all held by the banks in some for of an escrow account is my presumption.

Q. So the Arcon land, that would be State Bank, Mr. --

A. Yes.

Q. Mr. Stromberg's client?

Parkway North, which bank is that?

A. Parkway North, is that U.S. Bank? You'll have to forgive me. There's a lot of numbers on these pages.

Q. Go back to Schedule D, again.

Yes. I believe Schedule D reflects Parkway North. The lender is U.S. Bank.

A. Okay.

Q. And the Amoco property --

A. Is Petra.

Q. You were asked about the use of cash collateral across properties. And you indicated that you were keeping things separate --

A. That's correct.

Q. -- on each property. However, in the instance where certain properties are cross-collateralized, is it your understanding that the cash collateral order allows cash from one property to be used on another property?

A. That's my understanding, yes

Q. All right.

MR. BUNCHER: Your Honor, I have no further questions.

REDIRECT EXAMINATION

BY MR. WEITMAN:

Q. Mr. Crown, did you earlier testify that you're familiar with the leasing operations of Fenton Center?

A. No, I'm not familiar with the lease operations of

Fenton Center.

Q. So you don't know about leases on the property and the rents?

A. No. Other than what I've seen as part of the submittals in terms of leasing reports and things like that. But I've never been involved in the operation of any of the operating assets.

Q. Have you ever evaluated what the rental rates have been for recent leases at Fenton Center?

A. I have not.

Q. Let me ask you to look at the statement of financial affairs, which I think is at -- let me see if I do better this time -- Armed Forces Notebook -- excuse me, Debtor's Notebook G, and answer to question 5 dealing with foreclosures.

A. Okay.

Q. And was it not your testimony that you worked in connection with preparing the statement of financial affairs?

A. I did.

Q. I see all of these entities that had posted these properties for foreclosure, correct?

A. Yes.

Q. And they were foreclosing on it on January 4th, the date the debtor filed its petition in bankruptcy, correct?

A. That's correct.

Q. Have you since learned whether RMR Investments, Mr. Andrews' client, also had property that was posted for foreclosure?

A. I have seen the communications back and forth suggesting that was the case. This lists I got from the legal department at Prime and it does not appear to be on that list.

Q. Have you investigated it further to see if, in fact, RMR had posted property for foreclosure?

A. I have not as we sit here.

Q. Are you familiar with Regions Bank?

A. I am familiar with Regions Bank.

Q. Are you aware of whether Regions Bank also had posted the property for foreclosure?

A. I am not aware one way or the other. Other than it was not on this list.

Q. And you haven't investigated that since, correct?

A. Nobody has even raised the issue that it should be on the list to me.

MR. WEITMAN: One moment, Your Honor?

THE COURT: Uh-huh.

MR. WEITMAN: Your Honor, I don't know if it's the appropriate time, but I would just like to get a couple of items admitted into evidence.

THE COURT: Have you used them in the

examination of this witness?

MR. WEITMAN: Yes. Well, Your Honor, I had the docket sheet in connection with Woodmont. And I would like to have that admitted as Wells Fargo Exhibit 198. And then earlier Mr. Morgan was Wells Fargo 197, the bankruptcy case before Judge Jernigan. And if I can hand up to the Court, this would be Mr. Crown's declaration from the Woodmont case.

THE COURT: What exhibit is it?

MR. WEITMAN: 199, Wells Fargo 199.

THE COURT: Any objection to the admission of Wells Fargo 197, 198, or 199?

MR. BUNCHER: I'm not sure I know what the exhibits are, because I don't have them.

THE COURT: 197 is the case decided by Judge Jernigan in Mr. Morgan's personal case. 198 is the docket sheet in Judge Hale's Woodmont TCI Group case. And 199 is Mr. Crown's declaration in that case.

MR. BUNCHER: With regard to Exhibit 197, is it okay if I stand here, Your Honor?

THE COURT: It is. SO long as we can hear you.

MR. BUNCHER: I object to the relevance of Exhibit 197. It just doesn't have anything to do with this case, Judge.

THE COURT: Mr. Andrews.

MR. ANDREWS: Good morning, Your Honor. I have one exhibit. I've already tendered this to debtor's counsel and he's agreed to its admission. It will be styled RMR 1. I'd like to hand it to the Court and I'll simply refer to it in argument.

THE COURT: Very well.

Mr. Buncher, any objection to RMR Number 1?

MR. BUNCHER: No, Your Honor.

THE COURT: It's admitted.

Anyone else?

Mr. Olson.

MR. OLSON: If I could confer for just about a minute with Mr. Buncher?

THE COURT: You may.

MR. OLSON: Your Honor, I've got a stipulation that we would like to present when we come back from the lunch break. We're very close, but he needs to talk to his associate.

THE COURT: All right.

MR. BUNCHER: I'm going to need time to review this, Your Honor. I can't just on the spot -- I need to compare and talk to people on this issue.

THE COURT: Fair enough. Then we will -- well, let me ask, does any other movant have any further

evidence?

All right. Then the movants have rested, subject to Mr. Olson having the opportunity to add what he needs to add once Mr. Buncher has had an opportunity to review that and either agree or not agree. But we'll take up Mr. Olson's additional evidence. So the statement by the Court that the movants have rested is subject to Mr. Olson's right to attempt to introduce some further evidence.

All right. Where are we time wise, Mr. Buncher?

MR. BUNCHER: In light of the fact that Mr. Weitman called both of my witnesses on his case and we've essentially questioned them, I believe fully, I might since we are close to the lunch hour, I may like the opportunity to confer with my client over the lunch hour. But I think I'm done. I just want to have an opportunity to talk to my client.

And then we had reserved our opening statement, although I think at this point in time we're essentially to closing arguments. So unless I have a few clean up questions, I would be prepared to just do our closings.

THE COURT: All right. And so any -- do the movants anticipate any rebuttal? I mean, you might cross-examine --

MR. WEITMAN: Yes. Just to the extent that we hear new matters.

THE COURT: Fair enough. Then why don't we take an hour recess at this time. We'll come back at 10 of 1 and we'll finish up and do closing and see where we are.

Thank you all very much.

(Lunch recess ensued.)

THE COURT: Mr. Buncher, are we ready?

MR. BUNCHER: Yes, Your Honor. I think so.

Your Honor, this thing has been changed again. And I'm not trying to be difficult --

THE COURT: What thing?

MR. BUNCHER: The stipulation Mr. Olson sent to my office last night. We've been trying to confirm some facts, but they -- the facts at issue have to be confirmed through counsel, Mr. LaJone, that was communicating with the Trustee that was conducting the foreclosure sale on his client's property. And I'm just very reluctant to just sign off on something that's been changed now this morning again. And so --

MR. OLSON: If I can have just a minute?

THE COURT: Of course.

MR. OLSON: Your Honor --

THE COURT: Yes, sir.

MR. OLSON: -- the only evidence I want to put in is contained in this stipulation of facts that Mr. Buncher has just signed.

May we hand up your copy?

THE COURT: Please?

MR. BUNCHER: Did you sign it, Dennis?

MR. OLSON: I did.

THE COURT: All right.

MR. OLSON: And I have no other evidence and I'm ready to argue.

THE COURT: Very well. I'll accept that stipulation as additional evidence.

MR. WEITMAN: Pardon me, Your Honor. Is it possible to read that, in as much as no one else has seen a copy?

MR. OLSON: It pertains to the chronology of the sale that we conducted. But I've got a copy for anybody that wants it.

MR. WEITMAN: Okay. Thank you.

THE COURT: All right, Mr. Buncher.

MR. BUNCHER: We've already put our questioning on of Mr. Morgan and Mr. Crown during Mr. Weitman's case, so we have no further evidence. We've also put our exhibits in already, so we rest, as well.

THE COURT: Very well. Do all sides agree the evidence is closed.

MR. WEITMAN: Yes, Your Honor.

MR. BUNCHER: Yes.

THE COURT: All right. Then I'll take closing arguments.

MR. BROWN: Your Honor, Chris Brown for Wells Fargo Capital Finance.

THE COURT: All right. Thank you, Mr. Brown.

MR. BROWN: If I may?

THE COURT: Please.

MR. BROWN: Just by way of background, the debtor filed its petition in this case on January 4, 2011. Wells Fargo filed its motion to dismiss the case for bath faith filing on January 10th, 2011. We've proceeded very quickly to this point. And I hope that we will continue to do so and wrap this up in an orderly and quick fashion.

At this point the evidence now shows that we've got a joint stipulation that explains the various transactions entered into by the various transferor entities on the, what we've collectively called the Transcontinental side; Transcontinental, American Realty Trust, and Income Opportunity Realty Investors, IORI. Transferring all of the assets, or I'm sorry, most but not all of the assets of those entities, but then all of the assets of the various subsidiary entities over to the ABC LE Income side of the chart that was entered this morning at Exhibit 191, the big multi-colored chart.

THE COURT: Yes.

MR. BROWN: With the debtor receiving all of the various properties, the ownership interest in the debtor being moved from Transcontinental to ABC LD Properties, LLC, and the ownership interest in each of the transferor entities being moved over the ABC LD Income. So what we've had is a divestiture of assets and ownership in the subsidiary entities by the public companies on the Transcontinental side over to ABC LD Properties and ABC LD Income.

The debtor filed its bankruptcy within weeks of those transfer. And as part of those transfers you'll see on what we've called the blue and yellow chart, Exhibit 192, each of the transfers from the various transferring entities to FRE immediately prior to the bankruptcy. The issuance of the seller notes back to the transferring entities. And the assumption of debt, as represented by those transaction documents.

Exhibit 193, the list of transferor entities, excuse the notes on this one, but the clean copy that the Court has then reflects the amount of each of those seller notes, who the properties were transferred to, and the amount of trade debt that was assumed on each. And we've included a total of that trade debt as represented by the debtor at $1.4 million.

THE COURT: And the amount of the seller note purports to be the equity value?

MR. BROWN: They contend that the amount of

the seller note, the face value of the seller notes which now stands at about $48 million is reflective of what was the book value of the equity in those assets that were transferred.

THE COURT: So -- all right.

MR. BROWN: The issue that remains is whether that equity --

THE COURT: The value after the secured debt, though, is taken into consideration?

MR. BROWN: That is their contention. That's correct, Your Honor.

THE COURT: All right.

MR. BROWN: The loan documents, as reflected in the stipulations and as entered into evidence in the giant volumes of exhibits that we submitted show that the loan documents of each of the secured lenders represented in the various motions that are presented to the Court require prior written consent from the secured lenders for the transfers of these assets. In each instance, consent was not requested nor received by the debtor or by the transferring entity or by the parent. There as no consent.

With respect to Wells Fargo, our documents reflected that there had to be written consent to transfer the ownership interest in our borrower, TCI Texas Properties, LLC. And no consent was, again, requested or received prior

to the transfer of that ownership interest to ABC LD Income.

The debtor, as reflected in the stipulations, maintains, no harm, no foul. You know, we're going to take care of you guys in this bankruptcy. There's -- this isn't a big deal that we didn't get consent. The reality is to the contrary.

We had a right to consent or not consent to a transfer. Had we not consented and had they abided by the documents, we would have been in a bankruptcy, potentially, with TCI Texas Properties and our eight individual tracts of land. Instead we're now in a bankruptcy with various secured and unsecured lenders.

THE COURT: So is all of Wells Fargo -- were all of Wells Fargo's properties in TCI Texas Properties?

MR. BROWN: That's correct.

And so now we're in this bankruptcy that was filed by the debtor basically as a litigation tactic so they could roll all of this stuff up together, claim that the equity that they had in the gross amount of the properties offsets any deficiency that exists on other properties. And although they've committed to not using funds from one to satisfy expenses on another, we're in this situation where people's interest, especially at the unsecured level are going to be diluted, possibly by other unsecured creditors, possibly by deficiency claims that exist for the secured lenders. So

it's not a no harm/no foul this will all come out in the wash.

Moreover, the filing of the bankruptcy frustrated the lenders, not particularly Wells Fargo in this instance. But who were foreclosing on properties on January 4th. And --

THE COURT: But Wells did not have properties posted --

MR. BROWN: Wells had not posted properties for foreclosure. But Wells was frustrated in the sense that our properties were in default. The loans were in default. We had notified them of those defaults. And we were at liberty to exercise post-default rights and remedies that were stayed by the filing of the bankruptcy. So accordingly you've got prejudice to the secured lenders, prejudice to the unsecured creditors who are now diluted by unsecured deficiency claims and possibly other trade creditors.

THE COURT: Well, but, we don't know any of that yet, do we? We don't know that there will be deficiency claims. We don't know if there will be dilution. Certainly things have changed. Don't get me wrong. But do we know enough to know that there will be dilution to these creditors?

MR. BROWN: I think we know that there are properties that are under secured. Coming in it was Wells Fargo's contention that we were under secured by a million to

half a million dollars. I think at the end of the day it may be that we're marginally over secured. But when you factor in the ad valorem tax liens, it's probably a wash. On other properties, and I'm at a lost to tell you exactly which ones, But I believe there are properties that are under secured and so there may be deficiency claims at the end of the day.

THE COURT: But that's my point, may be.

MR. BROWN: That's correct.

THE COURT: You just said, as if you knew, that there were harms to the unsecureds who are now going to be diluted by deficiency claims. And I'm trying to pick at that a little bit. So what entities were under secured, from your perspective, if any?

MR. BROWN: I think the point that I was trying to make is that the filing of the bankruptcy can prejudice unsecured creditors who might be subject to a dilution of their claim where they might have gotten --

THE COURT: It could. Or it could actually help them. If they were in an entity where there was no value and now that there is excess equity at FRE --

MR. BROWN: I agree. If you accept the debtor's position --

THE COURT: So in theory it could be a benefit or a burden.

MR. BROWN: It could be a benefit or a burden.

But let's, you know, if there are some that are over secured and there are some that are under secured, if you're an unsecured creditor in an under secured property, then you may be burdened -- I'm sorry. If you're an unsecured creditor in an over secured property, you may be burdened by a deficiency claim that someone else may have on an under secured property and --

THE COURT: I'm sorry, say that again. You lost me. If you are a --

MR. BROWN: I may not be saying this exactly right. But I believe if you are an unsecured creditor in a property that is over secured, or maybe if you're an unsecured creditor in Wells Fargo's property that's a wash, for argument sake, then if there's under secured properties over here where a secured creditor is not going to be able to get the full amount of their claim and they have a deficiency that then gets satisfied out of this whole estate and you treat everyone as equal, all of the unsecureds as equal and all of the secureds as equal, if I'm an unsecured on a property that's a wash or marginally over secured, then I'm going to be diluted by a deficiency claim made by someone on our property that was under secured.

THE COURT: Yeah. But again, we don't know what we're going to have.

MR. BROWN: And I acknowledge that. The point

is the way that they rolled all of these properties together, putting properties that may be over secured may be under secured in one big pot puts those people at risk. And I'm saying that there's a risk.

THE COURT: But when I ask you who's over secured and who's under secured, you equivocate. And that's what I'm trying to figure out. Is this a hypothetical that we're talking about, or is this a real problem here?

MR. BROWN: I believe that there are secured creditors here today that will tell you that they are under secured on their properties. I am not in a position standing before the Court now to tell you which of those secured creditors they are.

THE COURT: Okay.

MR. BROWN: And not only have all of these assets moved to the debtor, as I stated earlier, all of the ownership interests were transferred. And so you've got transferor entities that no longer have any assets. And their condition is, Yes, but they also have no liabilities. But they ignore the fact that none of the secured creditors consented or released those debts. And so, yes, each of those transferor entities do still owe those debts and they have no assets from which to satisfy them. Their position is, Well, you'll be satisfied out of the debtor's estate. And that, again, is to the prejudice of each of the secured

lenders.

If you look at the joint stipulation and you look at the two charts, the before and after, and the transfer of assets, and the assumptions of debts, you'll see that this was just a scheme to roll all of these non-performing properties, or marginally performing properties out of Transcontinental's side, move them all over into the ABC LD side under the debtor. And put us all under this one big -- this one mega debtor bankruptcy.

Interestingly, when they did all of that they upstreamed all of the seller notes to the public entities. Each of the seller notes that FRE gave back to the transferor entities were transferred up to Transcontinental, ART, and IORI, so that they wouldn't have to write down their under performing assets, at least until something happens down the road and maybe they're not satisfied on these seller notes.

The Court has the transcript from the February 3rd hearing with Mr. Morgan's testimony regarding the meeting that he had with Mr. Moos on the TCI side and Mr. Akin on the FRE side. He talked about how he learned of the events. He was told, We've done this. This is a done deal. We've done these transactions. Do you agree that this was proper and will you step in as vice president and chief restructuring officer?

He said he looked at a sampling of the documents.

Didn't review them all. Couldn't testify as to what happened among these transactions between these companies. And said, Sure, I'll come in as vice president and chief restructuring officer. And I'll find a way to add value.

Now, there's no money in the debtor to pay Morgan, so he's working for free. The debtor has no employees, other than Morgan. They use Regis as property manager. They use Prime Income Asset Management for financial advising services. The same property manager and financial advisory company that provided those services to the Transcontinental entities prior to the transfer over to the debtor. And he says, I'm going to add value and I'm going to get a success fee.

There's been no application for his retention. There's been no application for approval of a success fee for Mr. Morgan. He couldn't tell us what it would be. What percentage it would be. He's just out of the goodness of his heart and in the hopes that he'll get a success fee going to try to add value to the debtor's estate.

He couldn't, however, give specifics as to how he was going to do that without a significant influx of money. And I think that's significant when you compare what's going on in this case to, for instance, the cases that the debtor cites in its response to our motion to dismiss. In each of those cases there were commitments for significant additional

capital, or equity to be pumped into the debtor to satisfy the needs of the debtor to get the assets out through the bankruptcy and out. And in this case we simply do not have that. There's no evidence of a commitment to do that at this point. He talked about a significant influx of capital to do the upgrade to the Fenton building. And we don't know where that's going to come from. I think his testimony was, I'll just have to -- we'll have to figure that out. We'll have to figure that out. It's almost as though they went into this thing with their eyes wide shut. You know, he steps in in December 23. Bankruptcy is filed on January 4th. And there really is no plan. This was simply done to frustrate the creditors.

The debtor has not filed any application to retain brokers to sell the properties and, yet, that is also part of Mr. Morgan's "plan". On the management side, there's no money to pay Prime. There's no application to retain Prime or Mr. Crown in this case. And let's not forget Mr. Crown's testimony before lunch that he wears a number of hats. And at any give time he's not exactly sure who he may be representing or where his duties of loyalty may lie. And that is further indicia of the bad faith in which this bankruptcy was filed, because he's providing services for the entities on the transferring side and on the receiving side.

There are no unencumbered funds to pay taxes,

insurance, maintenance, or adequate protection to lenders on the non-income producing raw land. And no evidence that any will be forthcoming. There's no commitment letter from Transcontinental.

In relation to the testimony about possible financing, you have to recall Mr. Crown's testimony that Transcontinental suffers from a lack of liquidity. And his testimony about the failure to fund the Woodmont bankruptcy under the amended plan of reorganization that resulted in plan defaults and dismissal of 6 of the 8 cases.

And as for Morgan, the Court should also keep in mind h is relationship with the transferor entities. Because even though he stepped in on December 23rd to represent the debtor as its vice president and chief restructuring officer, he has long-standing relationships with entities on the Transcontinental side. He testified about business deals that he had with entities in the ART family of companies. And his long-standing relationship with the Phillips family and services that he's provided for them over that past 35 or 40 years, I believe he testified. And then consider his expertise in restructuring.

What is the plan and outcome at the end of the day? He says he wants to get these properties sold. These entities have been trying to sell these properties for a number of years, so he proposes to repackage, hopefully work with the

lenders to allow him to put them in together with one broker to sell packages of tracts of land that may be centrally located. But consider his personal bankruptcy in which he testified and the evidence showed that he was invested in retail shopping centers that failed and led to multi-million dollar deficiencies and his seeking a contested discharge in that bankruptcy.

And then if you look at the Schedule D to the debtor's schedules -- in the debtor's schedules, you've got the exhibit of the creditors holding secured claims. And it reflects a total of $181.5 million. That number should include an additional 15 million for Armed Forces' debt which was under stated. I believe it was stated at 57, which should have been $72 million. And you consider the amount of the secured debt, whether it's 181 or 196, relative to the mere 1.4 million in unsecured debt and, again, you're lining right up with the Little Creek factors, once again.

Each of the following secured creditors joined in Wells Fargo's motion to dismiss, or filed their own, or filed pleadings to annul the stay, to terminate exclusivity. And in each, allegations of bad faith filing were alleged, were made.

American Bank of Commerce, Armed Forces Bank, First Bank & Trust, NextBank, Petra, Regions Bank, RMR Investments, State Bank of Texas, and Wells Fargo. And those secured

creditors represent 97 percent of the secured debt scheduled by the debtor. And it's not just the secured creditors who are here asking for this relief, Your Honor. Mr. Staber's client, Wicks Sidney -- Sidney Wicks, I'm sorry, has a claim of $153,000 out of the 1.4 million of unsecured debt. They're here asking that this be dismissed for bad faith.

If you look at the standards under 1112(b), once the creditors show, or a creditor shows that the case has been filed in bad faith, or makes a prima facia case of bad faith, which all of the evidence that we've just discussed and have been presented to the Court clearly shows, the burden shifts to the debtor to show that there are unusual circumstances. We've supplied the Court authority that in some cases you don't even get a chance to show unusual circumstances. The showing of bad faith is enough. But here there are no unusual circumstances that warrant relief not being granted, because it's not in the best interest of creditors or the estate. The creditors are all here asking for this relief, secured and unsecured. So the creditors have spoken loudly in favor of dismissal of this case.

The only other things that I would mention, Your Honor, the debtor relies heavily on this argument that they've made in footnote 4 to their schedule that all of the seller notes are super subordinated and no one is getting paid off on those and they're not going to dilute the unsecured creditors

in any of these properties. There's no documentation. Again, they went into this with out a plan and they're trying to clean it up. And it's evidenced that it was filed in bad faith and that's the standard that the Court has to consider.

The last thing I would point out, our -- again with respect to the Little Creek factors, there are single asset transfers in this case. Mr. Weitman questioned Mr. Morgan this morning about five of them where there were secured lenders whose rights and protections under 362(d)(3) have now been hijacked by the roll up of all of these properties into this mega debtor and throwing them in with the other secured lenders' collateral. And the Court should not tolerate that type of conduct. This is an abuse of the bankruptcy process. And the case should be dismissed for its being filed in bad faith.

Thank you.

THE COURT: Thank you.

Other movants, please.

MR. STABER: Thank you, Your Honor. David Staber on behalf of Sidney Wicks, who is the Trustee of the Sidney Wicks Revocable Trust.

We've heard the Little Creek factors discussed here. And I'm not going to go into detail and repeat that. You'll probably hear them again before oral arguments are through here. But I want to highlight three issues for the Court

that relate to my client and unsecured creditors that I think might not be covered by some of the secured lenders.

THE COURT: What entity was your client a creditor of prior to the transfers?

MR. STABER: Transcontinental Realty, the publicly held company.

THE COURT: Okay. So you're at that level.

MR. STABER: I'm at that level, Your Honor.

My first point is the debtor is not fulfilling its obligations as a debtor in possession. And this is directly on point with my client. As observed on our first day of hearings, the debtor has not paid post-petition rent as required by 365. The testimony given by the debtor was, I'm waiting for cash collateral to be resolved. But thereafter the debtor admitted into evidence Exhibits D and E, the cash collateral budgets. And I searched and I searched and there is no rent in those budgets. So the debtor's testimony is inaccurate. The documents show no use of cash -- somebody else's cash collateral to pay the rent they're supposed to pay.

The testimony this morning about this possible financing was it was to be used for unimproved property, the raw land, and that it would relate -- be specific to raw land. Well, that's not my client's situation either. So there's no funds coming in to pay that from source, as the

testimony -- in fact, the only testimony was Mr. Crown who said, Well, one of them is leased out, so we have a little money. But, again, there's been no effort to pay the rent. If you're not going to fulfill the duties of a debtor in possession, you should not be in Chapter 11. And that's been the evidence from the debtor's testimony and documents they have submitted. They're not acting like a fiduciary in a debtor in possession, particularly with my client.

The other area I tended to go into with both of the witnesses, and I know it may sound a little bit odd, was the co-debtor situation. And you asked questions about unsecured creditors. What's the situation here? And as I looked at that, the debtor's schedules are inaccurate in that regard. And they give a false impression to the Court that there's about 1.4 million with no recourse out there. And I'm going to tell the Court there's two groups of unsecured creditors here. There are people like my client who are unsecured, who have a lease with a publicly traded entity that we have never released. We are suing. And we will continue to sue for rent. So if this case gets dismissed, now I've got two pockets I can go after in my litigation. And the charts are wonderfully done and I have not memorized them. But you're going to be able to see the trade creditors that fall under those categories, the people that dealt with ART, Transcontinental, et cetera.

You're also going to see what I think Mr. Weitman had brought forth the evidence on is you have the raw land single asset entity that flipped their property over into this debtor to get the advantage of the stay. Well, as a general rule, other than the tax creditors and sometimes the person that mows the grass, there's not a lot of assumed debt out there. And those, I'm going to be candid with the Court, they've got a situation. They may have somebody to sue there, but there wasn't much there to start with any way. And your question was on point to Mr. Brown, could they possibly, this small group of creditors with small claims get some distribution some day in a case like this. And candidly, they might. But they might also be able to go pick it up simply because they're necessary to maintain the properties, no matter who's out there. And it's a relatively small number.

And I don't want to mislead the Court. We're all in the same boat there, because we're not. But the vast majority of the unsecured creditors fit in the situation my client is in where if this case is dismissed, I've got two to go after and collect the money. So dismissal is not harmful to a large portion of the unsecured body.

The final point I want to make actually was not one I walked in here intending to make this morning. But as I heard the testimony, the blurring of the debtor, of ART, and

Transcontinental, Mr. Crown not knowing who he's working for, actually working for all of the entities. Mr. Crown's testimony that Prime is not -- doesn't have a written agreement with the debtor, is not getting paid by the debtor, but is providing services related to these properties and the investments of ART and TCI and has been providing services even pre-petition and pre-formation of this entity, I think it's a pretty easy inference where he's getting paid for all of this.

It's a blurring and a benefit to TCI and ART. And I think the evidence this morning shows that. And ultimately what we have here is the new debtor syndrome, or what I used to call the flip and file. Flip the property into the entity and file it. And that certainly happened here. And the only response I'm hearing on why we shouldn't throw this out is, Well, we got everybody here. And we'll put out a plan. But when the testimony came down to it, what's your plan? Because we've been in this over a month now and there is no plan. It's the obvious stuff. Mr. Crown was correct. Yeah, you take income producing property and try to increase the income. You take the raw land and try to sell it. Except that hasn't worked for months, over a year is the testimony we have here.

This was a delay, a hinder case. And ultimately I would harken back a few years here. The concept seems to be

you take the bad stuff in ART, you take the bad stuff in Transcontinental, you add some bad stuff from little entities, you create one big mess and hope to buy some time that the market turns and maybe you can sort it out. And it reminds me of kind of the last time we did this where we take the bad stuff in InterFirst and the bad stuff in Republic Bank and a couple of other ones, combine them and make it First Republic. But it doesn't solve the problem. It increases the cost. It increases the mess. And the remedy here, Your Honor, which I think clearly on a new debtor flip and file type case here is, let's dismiss this. Let the parties that had foreclosed because they didn't get notice of the flip or of the file, affirm their foreclosures. Let the other secured lenders go out and do their foreclosures. And if there's value there that Transcontinental or ART wants to realize, then they can put money together. They can go bid at those foreclosure sales. And the unsecured creditors can go after the people they assigned their original contracts to. And that's the best result. And you haven't heard from a single creditor that they want something different.

Thank you, Your Honor.

THE COURT: Mr. Stromberg.

MR. STROMBERG: Thank you, Your Honor. I'm going to try real hard not to go over ground that's been dealt with sufficiently by other counsel.

THE COURT: All right.

MR. STROMBERG: Mark Stromberg on behalf of State Bank of Texas.

I think there was mention made about the problems that are created by the title issues from creating this super debtor. The issues about the violation of the loan covenants and the issues about avoiding the effects of Section 362(d). There was some discussion, however, about the cash collateral concerns that this bankruptcy has created based on the way in which it was generated by taking all of these entities and turning all of their property over into one super debtor on the eve of bankruptcy. And I think that's really the question. Because if we had separate bankruptcies for all of these entities, then they would be in bankruptcy. They would be dealing with their own issues. We wouldn't have this issue or problem created by the consolidation, in effect, pre-bankruptcy of all of these entities. So really the first starting point here is what's wrong with how we got here? And I think that's really the question that I've been struggling with and it may be the one Your Honor is struggling with, as well.

And in that regard, Your Honor, I want to start by the TCI/Woodmont bankruptcies that the Court heard a little bit of testimony about today. There were eight entities. They all filed separate bankruptcies. They were jointly

administered and came up with a joint plan of reorganization in Judge Hale's court, just right across the hall.

Now, it seems to me that the question that the debtor should be answering for Your Honor and hasn't answered yet is why are we doing this as opposed to that. Because a lot of the issues that we have here, like, for example, the cash collateral concerns, the issues about whether or not some unsecured creditors are going to be benefited and other's are going to be burdened. We wouldn't be dealing with those issues at all. So why not? It was possible for Woodmont/TCI, it should have been possible for this debtor, as well.

I would also point out that these notes that we've talked about here, Your Honor, they're a pretty important piece of this because they were created for the purposes of creating this whole transaction. And the debtor tells you in their testimony that these notes were really intended, though they don't say it, to be notes that relate to the specific properties. That the income from these properties and all of these things is related to those properties. That the creditors related to those properties will be the sole beneficiaries until there's any excess, if any, there is. They depend, coincidentally, on counsel for Prime or TCI to tell them that. But nevertheless, that's what they claim. That's their position here. But that's really not even

fairly characterizes an interpretation because it's not in the documents.

The concern that I have about this is that a Chapter 11 Trustee, or for that matter, a Chapter 7 Trustee wouldn't fell themselves at all bound by these interpretation of the documents that are for the first time and perhaps the only time, other than in testimony in this court, mentioned in a footnote in a cash collateral pleading.

Indeed, if the debtor in possession were truly independent, and we're going to talk a little bit more about that in just a minute or two, then perhaps the debtor in possession might not be depending on this footnote either. It might be actually looking at the documents themselves that don't say this. This lack of independence is critical. I think it's clear from what we've heard that the debtor has been dependent on the entities that created this set of transactions from the get go. The plan was created before Mr. Morgan ever agreed to take over, before all of these transfers took place. And by the time that he was getting involved, it had already happened. There were no alternatives considered by Mr. Morgan to the roll up. That happened and it was a done deal. Fate a complete by the time he got there.

His arrangements, as Mr. Brown pointed out, for payment are dependent on his long-standing business relationship with

Mr. Phillips and/or the TCI entities. But in all deference to Mr. Morgan, he has no prior chief restructuring officer experience in a bankruptcy. There was no indication as to why somebody outside of the TCI family was not considered for this job, as opposed to somebody who offices in the same building and who does business with these same entities.

If the debtor, indeed, had a case for that, for why Mr. Morgan was the best person for this job, other than the fact that he was there, I would have expected that it would have come out in the context of the evidence. So there were no alternatives considered. And more importantly, Mr. Morgan himself foreclosed several of the options that he himself thought were the most likely options for this debtor to reorganize, namely, asking TCI for financing. That discussion apparently did not happen until very recently and after questions were asked about this in the first part of this hearing that took place weeks ago.

So it was only on the eve of this hearing that the discussion of TCI putting any money into this case, even though Mr. Morgan saw it as a critical component of reorganization was ever brought up to TCI. And even then, as of today, there still has not been any investigation as to TCI's wherewithal or capability to fund, assuming arguendo that they were willing and interested. Which, of course, they weren't willing and interested to do before the

bankruptcy because if that had been the case, then perhaps this case might have looked different.

He depends upon TCI for a lot of things, Mr. Morgan does, or its affiliates, Prime Income Asset Management, including their lawyers for interpretation of the transfer documents. He depends upon them for the values of the properties, which was the values that came off of the public companies books so that they could make these transfers look like they were zero sum on the total books of the entities that are publicly traded.

He depends upon them for information that goes into the schedules and did no due diligence himself. He depends upon them for the property records that relate to the properties that he inherited on December 23, 2010. He depends upon them for the marketing of the property. He depends upon them for the financing of the property, even if it comes from third parties. So clearly there are serious issues here about independency.

But talking specifically about the issues that Little Creek raises. The question that the Court asked, and I think this is probably a fair question and even though it's just step one of a two-step process is when you get to bankruptcy is there any reasonable prospect for reorganization, or is it just the terminal euphoria of the debtor, to quote the 5th Circuit.

Rather than offer a specific plan, the debtor has offered every kind of plan. They've said, Well, we're going to restructure, or we're going to refinance, or we're going to get new capital, or we're going to sell some properties, or we're going to just operate. So rather than have a specific plan, especially in a case of this kind where the debtor could reasonably have anticipated that given the circumstances of these transfers pre-bankruptcy, pre-foreclosure, the creditors would be concerned and upset. There is no specific plan. And it bears mention that when you talk about the different things that the debtor has proposed, for example the property sales, there were none in prospect immediately prior to bankruptcy or in the year prior to bankruptcy, there are none in prospect now. When you talk about refinancing with one of -- or restructuring the debt with these creditors, there were none immediately in prospect before the bankruptcy and there were none in prospect right now.

You talk about the possibility of infusion of capital. We already talked about TCI. What about the possibility that third parties were going to infuse capital? None in prospect before the bankruptcy, and none in prospect now. So really what is it, if it's not terminal euphoria that the debtor's proposition of a plan is based on?

Then we talk about the issues of motive. The fact that

these entities transferred these assets to another entity that did not bear the name TCI, the fact that they used these transfers of the notes back upstream to TCI so they could show that there had been no loss on the books, that they could make this a zero sum transaction so they wouldn't have to perhaps report this to their public shareholders. These are all issues, issues that bear on bad faith.

And then finally there's the question about the upstreaming of the notes. And really the first question that one might ask is why are we even doing this? If this doesn't illustrate that we're protecting only the guarantors, I'm not sure what does. The debtor determines what they believe to be fair market value based on the book value of the asset. Then they record an obligation where they assume the debt. Then they take a note for the balance, which is the alleged equity and that gets transferred out of the debtor. So if the equity has left the debtor in the form of this note, which at least the documents themselves reflect, what are we here to protect? But more important than that, if we had an independent DIP in this case, one that didn't depend on the debtor for literally everything, whether it's payment, or documents, or information, or schedules, or what have you, then perhaps we would have a situation where the question might be asked and one might ask this question, would it be that Mr. Morgan would sue the people that worked down the

hall from him, if it turns out that these transfers of the notes, or perhaps these transfers overall were improper. I'm not so sure even that the question would come up. I've seen no indication in these hearings, and I suspect Your Honor hasn't either that the question has come up for Mr. Morgan or the people who represent the debtor. It has come up for the creditors, but not for the debtor.

So finally, Your Honor, I conclude by asking this question. I think I've argued this in a positive way. I think the evidence is pretty clear that this is a case that brings all of the concerns of bad faith into play. But I ask it the other way. If this isn't that case, I suspect Your Honor is having the same trouble I am envisioning what the case would look like that does bring those issues into play. And so asking the question in the negative, if not this case then what case? I think the answer is clear. The answer is that bad faith has been shown. That the debtor has not provided critical explanations as to why they didn't do these cases as separate bankruptcy cases where there would be no allegation of impropriety with respect to the transfers and the effects on other creditors. There would be no argument about impropriety in terms of a violation of the loan covenants. None of those issues would have come up. And the debtor has never once in this hearing answered that question. And in as much as they haven't, dismissal is appropriate.

Transcript of the Testimony of **fre ruling217**

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	)	BK. NO: 11-30210-BJH-11
	)	
FRE REAL ESTATE, INC.	)	
D E B T O R	)	

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TRANSCRIPT OF PROCEEDINGS

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BE IT REMEMBERED, that on the 17th day of February, 2011, before the HONORABLE BARBARA J. HOUSER, United States Bankruptcy Judge at Dallas, Texas, the above styled and numbered cause came on for hearing, and the following constitutes the transcript of such proceedings as hereinafter set forth:

* * * * * *

THE COURT: Nothing further. I don't need to hear further argument.

I have given this case a lot of thought. I gave it a lot of thought following the February 3rd commencement hearing. Let me back up.

Certainly as soon as this case came to my attention very shortly after the filing, and the request by the debtor, of course, as always comes up for interim authority to use cash collateral and we started preparing for that hearing and we saw motions to dismiss come flying in by a variety of secured creditors and joinders in motions to dismiss, it became apparent to me that we had a difficult situation brewing.

Ultimately at the interim cash collateral hearing I believe I suggested that what occurred certainly had caused red flags to arise. And that perhaps I would hear evidence that would explain and that I would look forward to hearing that evidence. Now, I haven't gone back to review the transcript of the hearing, but I think I pretty much said words to that effect. Which was my way, Mr. Buncher, of telling you that I really needed to understand why these entities chose to do this in the face of motions to dismiss for bad faith filings and the heat that the case was generating literally from virtually day one.

And so it is disappointing to me that I've now had a day and a half of evidence and the masterminds of this structure chose not to appear at the hearing to explain why this made some sense.

Maybe it's as simple as they didn't have bankruptcy counsel and they didn't realize that this was going to create all of the red flags and all of the hubbub that it has. I have no idea if they did or didn't have bankruptcy counsel. But for publicly traded entities of the sophistication that I think I appreciate here, it would be surprising to me if that were the case. But, again, I simply don't know. Because, frankly, I didn't hear from anybody who has personal knowledge of what was hoping to be accomplished here.

Now, as most all of you are experienced enough lawyers, I'll say it that way, to know that as a lawyer I preferred the debtor's side of the case. Some would say I was a debtor's lawyer. So it has caused me to have, as I said, a few sleepless nights thinking about this, because I heard Mr. Morgan loud and clear the first day, that he believes there is enormous equity value in these properties. $48 million was the number he offered. And, again, that may be quibbled with by certain parties. But nevertheless, I heard him loud and clear the first day that he believed there was substantial equity that could be and should be preserved here. And as some would say, a former debtor's lawyer, I

think bankruptcy is about preserving that value and having the opportunity to restructure obligations in order to successfully reorganize.

The problem that I have here, though, is there are too many red flags and no explanations. And that's about as succinct as I can state it. We have a sophisticated structure, as evidenced by Wells Fargo Exhibit 191, that existed as of December 22nd, 2010. And, again, it's a structure of the Transcontinental Realty Investors, Inc., American Realty Trust, Inc., and Income Opportunity Realty Investors' choice. They structured their public entity as they saw fit. And they structured it in a fashion that had a number of subsidiary entities to each of those three parents entities. And at least five of those subsidiaries were, as we bankruptcy lawyers would call them, single asset real estate entities. And, again, this was the structure of choice for Transcontinental Realty Investors, American Realty Trust, and Income Opportunity Realty Investors.

And for some unexplained reason, after a number of the properties previously held in these subsidiary entities had been posted for foreclosure and virtually all, if not all, of the properties at issue in our debtor, FRE Real Estate, Inc., were in default and thus foreclosure was in all likelihood imminent for those properties for which they had not yet been posted for foreclosure, we have transfers of the properties'

assets into this, while it's not a new entity because it did exist and it had an office building of its own, but all of the other properties that are at issue in this bankruptcy case were transferred into the debtor on December 22nd, 2010, or at least documentation was signed as of that date. There is some fuss as to when deeds were actually transferred, et cetera. And the rights of the creditors of those entities have been changed.

Now, in some instances I can unequivocally state that the rights have been changed to the detriment of the creditors. In other instances, it is premature to know if the rights have been changed to the detriment or potentially to the benefit of the creditors. But certainly with respect to Petra and the Amaco Office Building; State Bank and the Arcon land; U.S. Bank and the Parkway North Office Building; Regions Bank and the Westgrove Air Plaza Office Hanger; and First Bank & Trust Centura land; we know for a fact that the rights of those creditors have been adversely effected by the orchestration that occurred with respect to these assets immediately prior to the debtor's bankruptcy filing.

Now, with respect to those five creditors and those five assets, had the transfer not occurred, those creditors and those assets would have had to have been filed in what the Bankruptcy Code calls a single asset real state case. Congress has seen fit to provide special protections to

lenders in single asset real estate cases. Section 362(d)(3) of the Bankruptcy Code requires specific things to occur in order for the automatic stay to remain in place in a single asset real estate case. Other provisions of the Code give a single asset real estate entity a more limited period of time in which to propose and confirm a plan of reorganization.

By undertaking the orchestration that occurred here, each of those five secured creditors have been denied their rights pursuant to those provisions of the Bankruptcy Code.

Now, as I indicated in my colloquy with Mr. Roberts, I could fix that problem, because I have given thought to the potential from the debtor's perspective, harshness of dismissing this case and the chaos that they fear will occur upon a dismissal of the case. And how I could fix that problem is by simply, coincidentally upon those creditors' request for adequate protection, fashioning an adequate protection order that simply happened to track the requirements of Section 362(d)(3).

But what I can't fix for those creditors is the fact that with respect to a bankruptcy filing -- and I'll pick State Bank, as an example. With respect to a bankruptcy filing of what would have been on December 22nd Coventry Point Inc., State Bank of Texas would have been the substantial creditor in that case, with a secured claim of roughly $3.9 million and tax debt of roughly a quarter of a

million dollars, and trade debt of $22,000.

Now, while I suppose it's theoretically possible that $22,000 of unsecured claims could be an impaired accepting class so that I would cram down a plan on a $4 million creditor. The simple fact remains that that is always a better argument than it is a likely outcome, for a lot of reasons. State Bank could go up and buy the $22,000 of unsecured claims, if worse comes to worse and completely control the class and the case.

But my point being is there's no way to return those secured lenders to the position that they would have enjoyed had these orchestrated transfers not occurred. They would have been substantially in control, if not completely in control, of the fate of the bankruptcy of their single asset entity and would have had considerable powers. And now that the eggs all got scrambled as a result of the orchestrated transfers that occurred here, I have no way of unscrambling those eggs in the context of a confirmation process to put those parties back to the relative position they would have had before. Because now they are simply one of dozens of secured creditors of a single debtor, my debtor. And they don't enjoy the same, for lack of a better word, power that Congress gave them under the Bankruptcy Code in an entity which has lesser creditor and lesser debt levels. So there is no question but those creditors have been, for lack of a

better word, irreparably damages by the orchestration of transfers that occurred here.

Now, one suggestion was, Well, just let those properties go. Well, that's really not something that's before me today. What's before me today is dismiss this case for a bad faith filing, or find that it was an appropriate filing and decline to dismiss. It's the only issue that's before the Court today.

Now, it's possible that other creditors are damaged, as well. Certainly the facts have changed for virtually every creditor. Instead of the entity to which they made a loan, they now, other than NexBank who loaned to FRE Real Estate, Inc., all of the other secured creditors are now with a borrower that they didn't lend to and never consented to assuming their debt. The unsecured creditors may be benefited or hurt, depending upon the circumstances present for each of the prior entities prior to transfer. And at this point in the case, the Court simply can't tell if unsecured creditors are benefited or burdened. But what the Court can say is that essentially the effect of this orchestrated transfer was to effect a substantive consolidation of what should have been a, I guess I didn't count, 15 or 18 entity bankruptcy filing into a single bankruptcy filing. And the creditors now have no ability to object to such a substantive consolidation, because it

occurred essentially in the dark of night without the opportunity for them to have knowledge or to have an independent third party, such as a judge in a bankruptcy case in which substantive consolidation is proposed, apply the legal test for such a substantive consolidation.

So what we have here is virtually all, if not all of the properties in default. We have a substantial number of those properties posted for foreclosure. We have transfers of the assets in violation of every secured lenders' loan documents without their consent, and, frankly, without their knowledge. We have five creditors, at least, for whom their special rights created by the Bankruptcy Code have been irretrievably lost. And we have the rights of virtually every other creditor changes, as a result of the action that has occurred. And, again, that change may be positive or negative. It's premature for the Court to really know.

And, as I've indicated, the Court is simply left hanging as to what the business justification for this was, if any there was. Even after hinting that I looked forward to hearing the explanation for the orchestrated transfers as the initial cash collateral hearing, and after the better part of a day and a half of testimony, I still have absolutely no idea why the principals of these entities believed that this orchestrated process made sense.

As a result of the fact that no explanation was

Electronically signed by Cindy Sumner (201-144-852-6878)

offered, the Court is left, I believe, with the only logical conclusion. And that is, this was done to attempt to circumvent the requirements of the Bankruptcy Code. That, of course, is very troubling to the Court, both in the context of this case and in the context of any other case that might be filed before the Court.

I'm also troubled because of what I believe to be essentially a lack of independent parties. All of the assets are operated by essentially independent contractors. That prior to the orchestrated transfer and subsequent, continued to work for Transcontinental Realty Investors, Inc., American Realty Trust, Inc., and Income Opportunity Realty Investors.

So as the evidence with respect to Mr. Crown suggests, we have people who are wearing too many hats here. Mr. Crown's company -- Mr. Crown has been asked by his employer, Pryme, to assist the debtor as its financial advisor. Now, normally when you have a financial advisor in a bankruptcy case, there is an application to employ that person under Sections 327 or 328 of the Bankruptcy Code. Affidavits of disinterestedness are filed. And the Court holds a hearing with respect to the retention. None of that has occurred here in this case. And when asked about it, Mr. Crown says, Well, he's not really getting paid by the debtor, so why should he have to file anything to be employed? Well, the answer to that is because you're working

for a debtor, apparently, and the debtor and its professionals are fiduciaries.

And as the cross-examination by Mr. Staber suggests, Mr. Crown is wearing a couple of hats here, or at least his employer is wearing a couple of hats that probably precludes him from being retained in this case as a disinterested professional. He was asked specifically that when there's discussions about what's going to happen to the debtor's properties, who are you representing, and the answer was, Transcontinental Realty Investors, American Realty Trust, and Income Opportunity Realty Investors. And from this Court's perspective, that's the wrong answer. You're representing the debtor.

Now, certainly the ultimate holder has an interest. And they may have an interest as the holder of these crafted seller notes. So they may be interested in what's going to happen to the property, but that's not who you're accountable to for what's going to happen to the properties. You're accountable to the debtor and the debtor alone. And so that is of concern here.

Mr. Morgan is also of concern, but in a slightly different way. Because Mr. Morgan appears to be an experienced person in real estate. He certainly -- he nor Mr. Crown can be painted with the orchestration that occurred here as they both unequivocally testified that they got

involved subsequent, although it appears, perhaps, that Mr. Crown's company was involved in this process. He just simply wasn't. But in any event, Mr. Morgan is new to this. He came in, in fact, on December 23rd after it had all occurred. But, again, I have to say that the structure of his involvement is odd. There's no money to pay him. He doesn't expect to be paid for his time. But he expects that he will get some sort of a success fee that cannot yet be described and is not written down. But because of his prior relationships with Mr. Akin, who as Mr. Buncher and I discussed appears on a number of the entities as president and director, because he has a history with Mr. Akin and he trusts him, he thinks it will be fair.

Well, I appreciate that they have a friendship that goes back for many years. I appreciate that he trusts him. But I will tell you that it is odd that we have the person who is going to be responsible for the debtor's reorganization who isn't getting paid and who can't disclose to the Court or the creditors what the structure of his expected compensation is. That causes me to say that if he were a professional person that had to be retained under the Bankruptcy Code, he would likely not get retained. And if he is just an employee of the debtor, the issues surrounding the potential divided loyalty might be grounds for the appointment of a Chapter 11 Trustee so that, in fact, an

independent person would have the opportunity to decide what makes sense here and not someone who made well because of years of friendship and close relationships be beholding to parties that they should be directly beholden to.

So I'm not sure we have an independent debtor in possession. And I'm not sure we have an independent financial advisor advising the debtor. Those are very troubling to the Court.

As I mentioned previously, I am troubled by what has essentially effected a substantive consolidation of multiple entities pre-petition without compliance with the requirements of the Bankruptcy Code, had that same transaction been attempted pursuant to a plan of reorganization. And, again, it might well have been approved as part of a plan. But creditors would have had the opportunity to vote. And the Court would have required extensive evidence with respect to whether or not there was someone's ox getting gored as a result of the transaction.

Finally, I am very troubled by the precedent this creates. I do not believe that these types of transfers should occur immediately prior to a bankruptcy filing without a good business justification being provided to the Court that the Court finds credible such that the Court can find that this wasn't simply bad faith, that this wasn't an attempt to circumvent specific provisions of the Bankruptcy

Code.

Moreover, while I have given this a lot of thought, I do not think it's my problem to fix. And so the debtor's request that I not throw the baby out with the bath water because there's something that could actually have been reorganized here, that argument I appreciated it in the briefs. It kept me awake often. But I don't think it outweighs the fact that this Court believes that it must send a message that this cannot be tolerated. And, again, perhaps if there had been a good business explanation offered by a credible witness such that the Court could find no attempt to circumvent the provisions of the Code, no bad faith, perhaps that would make a difference. But I don't have that here.

So I recognize this is going to be a heck of a mess. But unfortunately this is a heck of a mess of the parties who created it. And that is not the creditors and that is not the Court. For those reasons, I will grant the motions to dismiss this bankruptcy case.

Now, I don't know quite what to do, Mr. Olson, with your request. So I'm prepared to entertain further argument about that.

MR. WEITMAN: Your Honor, if I may, I have been thinking about that issue. And if Your Honor were to first find that there was bad faith and cause for the annulment of the automatic stay, then we would have, if you

will, an annulment of the automatic stay --

THE COURT: But I haven't had a hearing on that motion yet. That's the problem.

MR. WEITMAN: I hear you.

THE COURT: I hear you. But unfortunately, we haven't yet heard those motions. I can't make that finding, at least not at the moment, I don't think.

Mr. Olson?

MR. OLSON: Your Honor, if I could give my two cents worth?

THE COURT: Please.

MR. OLSON: I wouldn't want to come back later to make that argument. I wouldn't want to slow down the dismissal of the case. We brought that up simply because we anticipated that a dismissal would preclude our ability to be heard on the motion to annul. And I asked for that language only on the slim basis that if you find that this was done in bad faith, perhaps a sanction, if you will, would be to say, then it was a nullity and it's of no effect. And the people who conducted sales can record their deed and it's simply the fact that the bankruptcy was filed and dismissed will have no effect on the validity of the sale and the deed. I think that's all this Court could do.

THE COURT: Let me hear from others.

MR. STROMBERG: Thank you, Your Honor.

On behalf of State Bank of Texas, we have a hearing scheduled, I believe it's the 28th, on our motion to annul the automatic stay. And you'll forgive me because this probably comes from my being a bankruptcy lawyer and not a real estate lawyer, but I'm not sure what the effect would be if the case is dismissed before a determination on annulment is made. Because as I understand the Texas cases from the state courts, they regard any action that is taken in violation of the Bankruptcy stay as not merely voidable, but void. Not recognizing, perhaps, the distinction that the 5th Circuit has made about the difference between annulment and lifting of the automatic stay.

So I am in the position of having a client who without notice of the bankruptcy foreclosed in the morning and got notice in the afternoon. And we have the 5th Circuit authority, it was a Mississippi case, but nevertheless, talking about the fact that if you were a creditor who happens to be in that situation, the effect of the recording statute may be such with annulment that you would end up with valid title, but first the Bankruptcy Court has to make a determination. So I'm stuck in the unenviable position of probably having an incurable defect of title, unless the real estate lawyer tells me I'm completely wrong. And that's quite possible.

So unless I can be heard on the annulment issue, then I

run the risk that having first foreclosed without notice of the bankruptcy and having messed up the title, in effect, because the bankruptcy for an entity that we didn't recognize for a case that we didn't know about, and our connection to which we didn't know about took place, then I'll be penalized a second time by not being able to clear title before the case exits the bankruptcy court.

So I don't know what Your Honor can do about that. I'm not necessarily asking that the brakes be put on the train here. But on the other hand, I would like the opportunity, if it's at all possible, to get the annulment issue heard and determined.

THE COURT: When is that heard?

MR. STROMBERG: The 28th, Your Honor.

THE COURT: Well, but that is going to -- I mean, I hear you. But I don't know which of the two you're saying. You say, Don't put the brakes on dismissal. But don't dismiss until after the 28th.

MR. STROMBERG: If Your Honor were inclined to give us until the 28th, I'd be happy to have it after that date. As I said, this motion has been pending for a while.

THE COURT: No, I know.

MR. STROMBERG: So I'd be happy to have the issue determined at that time. Unless the debtor is prepared to agree under the circumstances. But if not, then I'd

probably need to have my hearing before the dismissal, just to be able to cure the title issues. I don't know any other way to deal with this because, as I think about it, if Your Honor dismisses, then the question of whether or not you have jurisdiction to rule on the annulment is an open question.

THE COURT: Mr. Kinvig.

MR. KINVIG: Your Honor, my client is in a very similar situation to Mr. Stromberg and we're both in a little bit different situation from Mr. Olson.

My client ended up posting for foreclosure, foreclosing, and then we found out about the bankruptcy. And then we found out about the transfers. In that order. And as Mr. Stromberg eluded to, I believe it's the Pinetree case, the 5th Circuit case that is in my pleadings and I believe maybe in his pleadings, as well. But we both rely on. And just if I could give a little bit more color to that case.

What ended up happening is the Court focused on the timing issue. And the Court essentially found that if you foreclose without notice of a transfer and without notice of any bankruptcy filing, you're essentially a bona fide purchaser for value. And as a PFV, you're therefore not really effected by the automatic stay. And so while the Court -- the 5th Circuit used the term annulment to say, Well, the Court would go back and annul the automatic stay to effectively bless the foreclosure, it's not a traditional

annulment in the sense that there's separate factors that a Court would normally go through to grant an annulment of the automatic stay, which the Court might need to, or want to, or have to do for Mr. Olson's client. Mr. Stromberg's client and my client are in the different situation, the different paradigm of the 5th Circuit case in Pinetree where even though the Court called it an annulment, it's not necessarily an annulment. The Court essentially just blesses the foreclosure and says, This timing issue seems to make you a BFP. And as a BFP, the stay didn't really involve you. It didn't really effect you. So to put that color on it, we do want to make sure that we're protected in that instance so that we don't -- our position is we've already foreclosed. And we believe we have good title to the property. We don't want to have this case dismissed and all of a sudden we have to foreclose again or we end up in a single asset bankruptcy, even after we've foreclosed a second time.

Also as I mentioned in my pleadings on the motion to annul, and I believe I also mentioned it in our joinder to the motion to dismiss, one of our properties produces substantial cash flow, roughly 45 to $50,000 a month. And according to the debtor's cash collateral budget, they have just sort of been hording that cash. And I would imagine that there's roughly $100,000 in some bank account somewhere that is my client's cash collateral. And so when the Court

dismisses the case, whatever day the Court chooses, and however the Court decides how you want to do that, we'd like to make sure that that cash collateral is also protected or at least in a paradigm to where we can maybe go and get a state court receiver or something to seize our cash collateral, which we're entitled to via contract.

Thank you.

MR. LINEGAR: Your Honor, my issue is somewhat a little bit simpler. It's an issue of time.

I need to take my clients to the airport so they can catch their plane back home.

With respect to the motions, do you want us to prepare orders dismissing the case, or will the Court prepare its own order?

THE COURT: Well, I want -- I'm going to ask somebody to prepare the order. But we're going to have to figure out what the timing of the dismissal is, vis-a-vis these other issues.

MR. LINEGAR: I'll just check with Mr. Weitman.

May I be excused?

THE COURT: Of course. Thank you.

MR. STABER: Your Honor, I want this case dismissed as quickly as possible. So I'm going to offer you a solution of how we get the results to protect these three

entities. Not because I represent them, but because this is in my client's interest to go ahead and get this dismissed.

Again, the reference has been made. Actions take in violation of the automatic stay in the 5th Circuit are voidable and not void. And there has been no such action being brought to avoid those transfers.

Moreover, Section 349 of the Bankruptcy Code provides that unless you order otherwise, 349(b)(1), it reinstates any transfer that would otherwise be avoided, including 549 post-petition transfers, which I guess technically that's what we have here. So I don't see a problem fashioning relief under 349(b) in this instance, having the Court recognize that if they had been avoided, these post-petition transfers, they would have been reinstated. And since no action was brought under 5th Circuit case law, they're not avoided.

THE COURT: But --

MR. STABER: And, therefore, you're -- this case and the dismissal of it does not in any manner avoid those foreclosures and they can remain in place. It's a little bit of a stretch, Your Honor. And I'm trying to find something that works for the Court and for the parties here to avoid delay. And as I look at what happens on dismissal, it's supposed to reinstate any of these type of transfers that would have otherwise been avoided.

THE COURT: But they haven't avoided. I'm not sure 349(b) -- I mean, I'll give it some thought, but --

MR. STABER: I thought it might be a way, especially in light of the case law, that the Court could make a finding. These transfers were not avoided. Therefore the bankruptcy under the 5th Circuit case law, the bankruptcy and the dismissal does not effect that they occurred. Moreover, if --

THE COURT: But the first biggest problem is, I haven't had a hearing on these motions.

MR. STABER: I understand, Your Honor. And that's why I was looking at 349 and hoping and hoping that that could provide some help. Because even if there were something wrong with the transfers and foreclosures, the actual legal effect of your dismissal would be to reinstate them, even though they occurred post-petition, if they had otherwise been avoided.

Again, it's not my client's position. I was trying to find --

THE COURT: No.

MR. STABER: -- a legal mechanism to expedite getting this dismissed. And one of the other things, Your Honor, we're talking about fashioning orders and issues that may arise. I am waiting for the U.S. Trustee at some point to say, We need to get fees paid. I am waiting for the U.S.

Trustee at some point to say, We need to get fees paid, U.S. Trustees. I don't want that holding up the order. I had a nice suggestion that there's $100,000 retainer out there that would be a good source of paying those. But that's another issue as we look at timing, since we're dismissing the case. But, again, Your Honor, I want that on the table for the Court because I don't want an order to come through and then suddenly we have this issue of how are those going to be paid. So, again, I'm not trying to complicate it, but actually trying to move it along so we can go ahead and see dismissal here.

Thank you, Your Honor.

MR. SAKONICK: Your Honor, Steve Sakonick again for Parkway North. I remember at the opening statements somebody had made request regarding cash collateral. I know it was mentioned by one of the prior creditors here.

Under state law you have to take possession of the rents in order to enforce your assignment of rents. Under 546(b), we do that automatically with filing of the notice of perfection, which my client invoked through a filing of a notice of perfection. What we'd like to see in the order is that the cash collateral be surrendered. I mean, Parkway North, according to their budgets would generate about $20,000 a month in excess cash flow after escrowing 9,000 and

change for taxes. So that's about 30,000 a month we're looking to be returned to the secured creditor. What we would like to see is that the order include not only the transfer, but that the 546(b) have taken effect so that the creditors are deemed to have taken control over the cash under the applicable state law.

THE COURT: Mr. Weitman.

MR. WEITMAN: Your Honor, we haven't discussed this. You obviously cannot pressure the debtor to do this. But I presume, you know, based on 102 and the debtor's consent, the debtor could consent to the annulment of the automatic stay.

THE COURT: Oh, of course the debtor could.

MR. WEITMAN: I mean, I just -- that is -- granted, it's not within the Court's power, but it certainly is within the Court's maybe request, kind request to stop the bleeding in this case.

I would also point out, Your Honor, I've drafted a proposed order that basically states that we incorporate by reference the Court's findings of fact and conclusions of law. I had some language dealing with what I thought might be cause, which has now been removed with respect to the annulment of the stay. And since the U.S. Trustee hasn't shown up, I removed any provision for payment of the U.S. Trustee's fees. And I've also included something that

basically the debtor with its officers will cooperate fully to basically get back to the secured lenders of the income producing property their cash so that we can have an orderly transition.

THE COURT: I don't know what you mean by -- you didn't have the cash in the first place.

MR. WEITMAN: Not me. But I'm thinking for all of the group here. If we have --

THE COURT: They didn't have the cash. The debtor had the cash.

MR. WEITMAN: Right. Correct. For the debtor to turn over to the respective secured creditors --

THE COURT: Why should I order that? The secured creditors didn't have the cash when the debtor filed. So why should I order that it be turned over?

MR. WEITMAN: Only because we've been operating under cash collateral orders. And I would think that with the dismissal of the case it might provide for an orderly transition of the respective creditors collateral. If Your Honor doesn't wish to do that, so be it. I'm just saying that it was among the things to try to "have a softer landing" if this case were to be dismissed.

THE COURT: Well, but a softer landing for who?

MR. WEITMAN: The secured lenders.

THE COURT: I mean obviously the secured lenders like that. I'm guessing the debtor won't consent to that. I don't know. Have you asked Mr. Buncher?

MR. WEITMAN: I thought I shouldn't bring that up until after the Court ruled.

MR. BUNCHER: I would like to be heard. But I was waiting for everybody --

THE COURT: A break?

MR. WARNER: Good afternoon, Your Honor.

THE COURT: Mr. Warner.

MR. WARNER: Michael Warner, Cole Schotz on behalf of HCM LP.

Not my motion, but my issue now. And Mr. Weitman has raised the issue. And I'm not sure he articulated the issue that's important to me and my client.

On the date of the filing of the petition, the debtor had no cash from the Fenton property, my property. It was in a rock box. We had swept it. We had swept it and have taken the position pre-petition as well as post-petition that it was an absolute assignment. I don't need to debate the legal issue.

On the date of the petition the debtor sought to use cash collateral. We said it's not cash collateral as defined under the Code. We said it is our cash. We entered into an agreement on an interim basis to use our cash. And the words

carefully said, It's the cash use agreement, not the cash collateral agreement. Very technical. The language in the agreement said that we took the position that it was absolutely and unconditionally assigned to us, the lenders, before January 4, 2011. Notwithstanding that, the order goes on to say, We will allow your use. We allowed them to use January and February. And interesting to note, about 280 grand, roughly, January and February were the budgeted expenses. The operating report for the month of January showed expenses of 95,000 actually being used. So in excess of 180, we'll call it, from January was not used. Now, it may have been used in February. We haven't seen an operating report. But we also gave them the February money of another 280. If this case is dismissed today, tomorrow, or whatever the date it is --

THE COURT: You want your money back.

MR. WARNER: -- I want my money back.

THE COURT: It hasn't been spent.

MR. WARNER: It hasn't been spent as of the date of the dismissal, because that money was not the debtor's, it was given to them pursuant to an agreement to use, assuming this case was going forward. So the order to that extent needs my protection.

Thank you.

THE COURT: I hear you.

Mr. Franke.

MR. FRANKE: Your Honor, for Regions Bank. Again, I find myself me too.

Regions actually didn't do a post-petition foreclosure. Actually recorded the deed. I am favorable --

THE COURT: With or without knowledge.

MR. FRANKE: Without knowledge, Your Honor. We didn't have knowledge of the case until two days ago.

THE COURT: Oh, that's right. You told me that. Sorry.

MR. FRANKE: We are the ones that are real late to the game.

I liked Mr. Staber's argument. I liked his position. I liked what Mr. Stromberg just proposed. I like what Mr. -- the proposal agreeing to the annulment. To the extent that this Court would entertain, since it's not Mr. Staber's client's issue, the Court would entertain some type of research on 349 that would assist in that, happy to provide it since we're late to the game. We haven't filed a motion to annul the stay. Anything along those lines, if I asked, would be significantly delaying. And I could hear a loud groan behind me if I asked for that. But if it would help expedite that, I want to protect Regions. They're one of those five creditors who have the single asset. And they didn't have knowledge and they did foreclose and they did

record the deed. And I could find myself in a single asset case back here months from now doing the same exact thing and I want to avoid that. So if the Court will entertain, I'm happy to provide under short notice while everybody is negotiating the order.

THE COURT: Please. That would be great.

MR. FRANKE: Thank you, Your Honor.

THE COURT: Mr. Buncher.

MR. BUNCHER: I'm not trying to be flippant here. But what comes to mind a little bit is, be careful what you ask for here. Okay. Because they want the case dismissed and thrown out immediately, but then they say, Well, wait a minute. We didn't think about the fact that the Court hasn't ruled on the stay issues and so forth. And I can appreciate that. But that's where we are. And, frankly, we had significant issues, factual issues with regard to precisely timing of emails that were sent to the Trustees that were foreclosing, phone calls that were placed. So these are -- they're not lengthy facts, but there are facts specific, relevant to that decision of whether legal title existed in the debtor at the time of this bankruptcy filing and prior to the foreclosures.

There's a decision from Judge Lynn in Fort Worth, the in re Nguyen, N-g-u-y-e-n, I believe, decision, wherein he held that legal title -- in order to transfer title under

Texas law, there has to be actual delivery of the title -- excuse me, of the deed to the bank that's doing the foreclosing. And in that particular case he could not determine from the facts on the record whether the title -- whether the deed was -- whether the agent, the Trustee that was conducting the sale had sufficient authority to actually receive to take delivery of title, as opposed to having to deliver it to the bank. So I would object to any findings of annulment of stay, or retroactive annulment of stay without having had hearings with regard to the facts of each specific foreclosure. And Mr. Olson's client admitted in the stipulation having not actual knowledge of the bankruptcy and the transfer. I think, frankly, they have to go through the process of re-posting the properties for foreclosure.

THE COURT: Well, no if I annul the stay.

MR. BUNCHER: True. And if we want to delay dismissal and have hearings on that, I guess that's the Court's prerogative to do so. I'm not following at all this 349/549 argument. 549 is where the debtor avoids a -- it's an avoidance of a post-petition transfer of -- by the debtor to somebody.

THE COURT: I'm not following it either.

MR. BUNCHER: So as far as what happens with the cash, I mean, you know Mr. Warner, most of the cash, I believe, is sitting in his lock box. The reason for the

discrepancy between the cash collateral budget and what the MOR says is because by the time the orders got entered and the money got transferred, a lot of the January bills ended up getting paid in the first month of February -- first part of February.

I really think a number of these issues are going to just have to be sorted out. If the Court wants to take up the stay issues before dismissing, I guess we will come down and try all of that. With respect to what happens with properties and where we go from here, honestly, I've got to visit with my client in terms of what we're going to do. And whether they're going to try to take further actions to protect these properties. And, you know, whether they're going to try to talk to some of the lenders about maybe working something out with respect to certain properties, or just try to do some things with a subset of these properties. So I really can't speak to these -- all of these issues here today, Your Honor.

THE COURT: I appreciate that.

MR. WEITMAN: Just a last comment, Your Honor, to make it absolutely clear.

I think based on what I'm hearing Mr. Buncher say, this could be a protracted period of review, et cetera, with respect to each of the parties that are seeking annulment of the automatic stay. And I think everyone is of the view that

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these cases should be dismissed. They should be dismissed immediately.

THE COURT: Well, I'm not sure everybody is of that view, Mr. Weitman.

MR. WEITMAN: Pardon me. I would just say Wells Fargo is of the view, forgive me, that these cases should be dismissed. That if we keep the case alive to have six evidentiary hearings as to the kinds of issues that Mr. Buncher intends to bring before the Court --

THE COURT: Well, it's not Mr. Buncher. Other parties, secured creditors.

MR. WEITMAN: The -- we have the issue of the annulment of the automatic stay.

THE COURT: Yes.

MR. WEITMAN: And what was known and what was not known by each of the entities, which would be, I believe, a long evidentiary hearing.

THE COURT: But, Mr. Weitman, you know, you're not telling me anything I don't know.

MR. WEITMAN: I would just ask Your Honor if Your Honor would consider granting a dismissal immediately and let everything else follow its course with what needs to be done outside of bankruptcy.

Thank you.

THE COURT: And I'm sure that is your client's

position. But I've got other people who are worried about other things, too. So what's the -- I mean, I don't think I can do anything today to deal with the annulment of the stay. There are motions on file that the debtor is contesting some of those motions. I think they've got to be heard. So I don't know what parties want me to do. I am going to dismiss this case. Whether I dismiss it today or in two weeks is going to be dependent upon trying to minimize prejudice to everyone. Everybody is in this case that I have found shouldn't be in the situation they're in.

And so, Mr. Weitman, while I appreciate that Wells Fargo would like the case to be dismissed today, I don't think there is unanimity among the movants that that is appropriate. So what is -- I mean, anybody got any suggestions?

I mean, we could hear all of the annulled stays. I don't know if I have time to add them all to the -- somebody's setting is the 28th. I don't know if I have time to add all of them to that setting and to hold the dismissal in abeyance until after that settling. I don't know.

MR. OLSON: Could I?

THE COURT: Please.

MR. OLSON: Your Honor, if you'll recall when we were here last time, there was discussion of pushing the motions to lift stay back to the 28th. Mr. Stromberg had

gone first and had gotten a setting for his client on the 28th. And a couple of us, I've forgotten who the third fellow was, said, Well, we'll get those on the 28th, as well. Mr. Buncher said, Wait a minute. The Court's not going to have time to hear three contested final hearings on the 28th. So I have not set mine. But with the evidence that has come in on February 3rd and today, particularly the stipulations, it may be that we could try all of that on the 28th on just the, what's your chronology on the 4th and let the Court take it from there since the Court has found the bad faith. That might help compress it. And I'd be willing to work toward trying to get it all heard on one day.

I sympathize with Mr. Weitman. And, frankly, my client doesn't want it to drag on, either. But we would like to avoid re-posting, if we could.

THE COURT: Understood.

MR. STROMBERG: Your Honor, I echo the sentiments from Mr. Olson. You know, in a case many years ago in which Mr. Neligan's firm was involved where he was representing the debtor, it was a trucking case, and Judge Abramson asked me whether or not in that case we should just give the parties the benefit of their bargain. And my response to him was, Well, we've been subject to the automatic stay and we didn't necessarily like it. Don't make it any worse by pulling the wheels off at the last minute.

And I ask the same of Your Honor here. I realize that we've been here supporting dismissal. But on the other hand, Mr. Kinvig did say in his opening remarks that he wanted to -- he was alerting the Court to this issue and we had filed our motions, respectively, to annul the automatic stay well before the first hearing on February 3rd. So anything that the Court can do to hear these motions before dismissal occurs, before jurisdiction is gone, and before we suffer additional prejudice as a result of the transactions that brought us here in the first place, we would appreciate it.

Thank you.

MR. FRANKE: Your Honor, it sounds like my time might be better served researching getting an expedited motion on file, if I can do that for relief from stay for Regions. I'd be willing to go forward with that on the 28th, as well. And I'm more than happy to do that. I don't want to delay it any longer than that.

MR. KINVIG: Your Honor, I'd echo what Mr. Stromberg said without repeating it. We do not actually have a hearing set currently. But we would be happy to do it on the 28th. As I mentioned, because of the two branches of sort of the annulment case law and us being on a much shorter branch, as opposed to Mr. Olson, I think that we could really get things done pretty quickly because it's -- there are factual issues, but they're not many. And it's a pretty

short subject to work through.

MS. HARTWICK: Your Honor. Jo Hartwick for Petra. We, like Wells Fargo, Petra would like the case dismissed immediately. But we can also appreciate that the Court has to consider everybody's situation.

Thank you.

THE COURT: Thank you, Ms. Hartwick.

Please, Mr. Buncher.

MR. BUNCHER: Your Honor, just -- I would just point out that we have agreements with counsel for I think Mr. Stromberg and Mr. Kinvig for discovery to be taking place, including a couple of depositions that have been scheduled. And I'm not giving up my right to take that discovery. of the Trustee that was conducting the foreclosure sale and a corporate rep --

THE COURT: Of course not. Until the case is dismissed, you're free to do --

MR. BUNCHER: The only reason I'm bringing this up is, we had agreement -- I think one of them is set the 28th. But we had not agreed to set the others on the 28th only because it places potentially an undue burden on our side to have to do a bunch of discovery by the 28th. But whatever the Court sets as the time frame, we'll comply with it. You know, I don't see why it's that big of a deal that they re-post the properties for foreclosure, frankly.

THE COURT: Because they're afraid your client is going to try and put the properties back and file again, is my guess.

MR. BUNCHER: I understand. And the Court has ruled that the way they did it -- they shouldn't have done it the way they did it. But as I said in my closing remarks, there is -- first of all, the lenders are in no different position as far as the foreclosures, and the timing, and what happened if we had filed all of the different entities in the bankruptcy. And so, you know, we will be considering whether or not we're going to try to re-file something here.

THE COURT: Of course.

MR. BUNCHER: If they want the case dismissed, the case should just be dismissed, is I guess my point. I don't think we should have to keep doing work in a case that the Court has dismissed.

THE COURT: Well, but the filing of the case has caused these problems. And so the Court is going to deal with them.

Here's what we're going to do. I'm not going to dismiss the case today. I'm going to hear all of the motions to annul on the 28th. And you all just pack your toothbrush and your lunch, because it's going to be piecemeal. You have 25 minutes, whoever had the motion set on the 28th at 25 minutes, which was not much. We have 50 more minutes that

morning. And then that afternoon we have our U.S. Trustee and our Chapter 13 docket. Ms. Durham's U.S. Trustee's docket is not terribly lengthy and often those things come off. So we'll just keep hearing it during the day, as best we can. I will tell you that I will take up my 13 docket at 2. And I have -- I will not know how many cases on are on that docket until about 1:00 that afternoon. So there might be 5 cases, there might be 40 cases. So we're just going to see what we can do. And I guess for lack of a better word, hope for the best. Hope that there will be enough time that day that we can hear the motions to annul.

So I've got motions to annul by Mr. Kinvig's client, Mr. Stromberg's client, Mr. Olson's client, Mr. Franke, you're going to file one?

MR. FRANKE: Yes, Your Honor.

THE COURT: Anybody else? Am I overlooking anybody else?

MR. WATSON: RMR Your Honor.

THE COURT: Come to the podium, Mr. Watson, please.

MR. WATSON: Jermaine Watson on behalf of RMR. We have a motion for stay relief on file, as well.

THE COURT: Well, but for what? Did you foreclose?

MR. WATSON: No, we did not foreclose.

THE COURT: So what -- help me. You've got to tell me more.

MR. WATSON: I'm sorry. I'm sorry, Your Honor.

THE COURT: These are requests to annul the stay where the lender foreclosed prior to the bankruptcy, or the same day as the bankruptcy filing.

MR. WATSON: Yes. We had our sale posted, but we didn't foreclose.

THE COURT: You didn't foreclose.

MR. WATSON: We did not foreclose, Your Honor.

THE COURT: So there's nothing to worry about. Once the case is dismissed, you go do whatever you want to do.

MR. WATSON: Okay. Thank you.

THE COURT: The people that I'm concerned about are the people who took action either property or improperly and we'll figure that out.

MR. BUNCHER: What time is the first hearing?

THE COURT: 9.

Now, Mr. Warner, I don't know what to do with you. I think you need to talk to the debtor about where your cash collateral -- where your cash is, from your perspective and how much is left over from February, January and February.

MR. WARNER: As of what date? That's the

problem.

THE COURT: Well, until the case is dismissed they have authority per your agreement to use cash -- to use your cash.

MR. WARNER: Right.

THE COURT: So I think there's also going to have to be a reconciliation. Now, ideally, I'm hoping that we'll be able to dismiss the case promptly following the hearing on the 28th. But --

MR. WARNER: And here's what I'll do, Your Honor. I will get with the debtor prior to the 28th and get the cash from us and cash out so that I'll know. And then on a daily basis we'll account so that the order I can give -- that the order that's given to the Court on dismissal includes a paragraph that reads, Cash in/cash out, net back to us.

THE COURT: Well, I'm not going to say yes to that. Obviously that will be your position that the order should say that. You need to talk to the debtor to see if the debtor is agreeable to that being a part of the order.

MR. BUNCHER: I would also --

MR. WARNER: I apologize, Mr. Buncher. But assume that the debtor is not agreeable. That's an issue to address at the time of the dismissal.

THE COURT: Of course. Yes.

MR. WARNER: Thank you.

THE COURT: I mean, if the debtor doesn't agree, then we'll hear about objections to the form of the order at that 28th hearing.

MR. WARNER: Very good.

THE COURT: But in the mean time, I do want a proposed form of order circulated. And if there are problems, I want to hear about them before the 28th so that I have an opportunity to understand what the fuss about the form of the order is going to be prior to during the hearing itself.

MR. WARNER: As to my straightforward issue, I'll circulate proposed language to Mr. Buncher that would be asserted in whomever is drafting the dismissal order. And we'll either alert the Court that it's agreeable or it's not.

THE COURT: Perfect.

MR. WARNER: Thank you.

MR. WEITMAN: Your Honor, one question. With respect to the hearing on the 28th, are you then going to cover at the back end of the hearing the dismissal issues and how you intertwine that?

THE COURT: That's my thinking.

MR. WEITMAN: And is there an estimated time when that -- or I need to be there the whole day?

THE COURT: Well, I would hope not. But

perhaps one of your colleagues can call you as we're winding up on the annulment issues. Because, Mr. Weitman, I have no idea. It may well be that we can finish this up quickly and we'll reach it in the morning. It may well be that it's tedious and we aren't going to reach it until later in the afternoon. I just have no way of knowing right now.

MR. WEITMAN: Well, possibly Mr. Buncher, who has been so kind during these proceedings, will notify me before we get to that point with a little bit of notice.

Thank you.

MR. BUNCHER: I would only point out that we have another cash collateral hearing on February 22nd, because our current order expires at the end of February. And, you know, I don't think anybody -- it's in anybody's interest to have us unable to pay the operational expenses at the properties if, for example, the Court doesn't enter an order on February 28th finally disposing of the case. We still may need to have some interim relief in that event. So I just bring that to the Court's attention. We may be here on the 22nd if we can't work something out. There --

THE COURT: It seems to me that -- I mean, I'll just offer my view. It seems to me that we could continue the interim order pending the conclusion of the issues on dismissal.

MR. BUNCHER: And we'll get -- Mr. Crown can

supply the March budgets to people. But, I mean, we can't have a situation where we can't pay the bills on Fenton Center, for example.

MR. WARNER: Your Honor, I'm happy to address it with counsel and not do it here in front of the Court as to what we do vis-a-vis March. Because if it's dismissed on the 28th, I don't want to be having money out there.

THE COURT: Understood. Understood.

MR. WARNER: Nor do I want bills pre-paid. Nor do I want expenses in advance of a budget. So we'll talk about it. We have a hearing on the 22nd. Just so the Court's aware, there's a hearing on March the 3rd on my motion, as the Court is aware, to terminate exclusivity. So if the Court wants to clean it calendar a little bit, given that this case is being dismissed, I'm going to assume we're not going to have that hearing. I'm going to assume that I won't file my witness and exhibit list and all of that and get prepared for it. So we'll consider that off, since the Court has ruled that the case is being dismissed.

THE COURT: Fair enough.

MR. WEITMAN: Your Honor, if I may just interject, only because there was a point Mr. Staber brought up earlier. And that is that in order to dismiss, there may need to be U.S. Trustee fees paid. It seems like the folks that have the income, okay, that is the basis from which you

calculate, as I understand it the U.S. Trustee's fees, if there might be a line item for an allocation among the income producing properties for the U.S. Trustee fees through the date of dismissal.

THE COURT: Well, you all talk about that. Clearly the U.S. Trustee fees are going to have to be dealt with. And I think you all should talk about how you're going to do that.

MR. WEITMAN: Okay. Thank you.

THE COURT: What else?

MR. BUNCHER: I'm sorry. I guess we are still having -- we are still having a hearing on February 22nd because there are open issues. I don't know if we're going to get them resolved or not, Your Honor, on the cash collateral.

THE COURT: I understand. I'm not taking that one off the docket. My hope is though between now and then you all will agree to an interim that gets us to the date of dismissal. But if you don't, we'll have a contested hearing. But --

MR. BUNCHER: Honestly, I think that Mr. Warner and I should be able to work something out, I would hope.

MR. WARNER: The Court's looking at me as if I should respond.

THE COURT: No, I'm not. I hear you. I wish everybody could always work things out. Sometimes that happens and sometimes it doesn't.

All right. Thank you all very much. We are in recess. You're excused. I'm going to be out here a minute.

Thank you.

(End of Proceedings.)

C E R T I F I C A T E

I, CINDY SUMNER, do hereby certify that the foregoing constitutes a full, true and complete transcription of the proceedings as heretofore set forth in the above-captioned and numbered cause in typewriting before me.

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